

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Judith Schlueter,

Plaintiff,

v.

Bethesda Healing Ministry,

Defendant.

Case No: 2:17-cv-1055

Judge Graham

Magistrate Judge Vascura

Opinion and Order

This matter is before the court on plaintiff's objections to the Magistrate Judge's March 26, 2018 Report and Recommendation. The Magistrate Judge found that plaintiff had failed to timely perfect service under Federal Rule of Civil Procedure 4(m) and recommended that the complaint be dismissed without prejudice to refile.

Plaintiff argues that the filing of her amended complaint reset the 90-day window for service on the defendant named in the original complaint. However, the cases she cites for this proposition concern the situation in which courts have recognized an additional 90-day window to serve a newly-added defendant in the amended complaint. See Al-Zerjawi v. Kline, No. 4:15-cv-2512, 2017 WL 6560571, at *2 (N.D. Ohio Sept. 7, 2017). Plaintiff's "resetting" theory is contrary to considerable authority on the issue. See e.g., Lee v. Airgas Mid-S., Inc., 793 F.3d 894, 898 (8th Cir. 2015) ("[F]iling an amended complaint in itself does not toll the service period' or reset the 120-day clock; at best, 'adding a new party through an amended complaint initiates a new 120-day timetable for service upon the added defendant.'") (quoting 4B Charles Alan Wright, *et al.*, Federal Practice and Procedure § 1137 (4th ed. 2015)) (emphasis omitted); Bolden v. City of Topeka, Kan., 441 F.3d 1129, 1148 (10th Cir. 2006) (holding that the time period provided by Rule 4(m) "is not restarted by the filing of an amended complaint except as to those defendants newly added in the amended complaint").

Plaintiff next contends that she did in fact serve defendant's statutory agent on March 8, 2018 (one day after the expiration of the 90-day window) with the amended complaint and summons. This assertion is not supported by the record.

The court hereby adopts the Magistrate Judge's finding that plaintiff failed to serve the defendant. The court further finds that plaintiff has not demonstrated good cause for the failure.

The court defers adopting the Magistrate Judge's recommendation that the action be dismissed. In her objection, plaintiff requests that the court allow fourteen days for her to effect service. The court grants this request and plaintiff is hereby ordered to properly serve defendant with a summons, the original complaint and the amended complaint within fourteen days of the date of this order. Failure to do so will result in dismissal of this action.

s/ James L. Graham
JAMES L. GRAHAM
United States District Judge

DATE: April 3, 2018